CASES CITED.

PAGE

Ancient Egyptian Arabic Order of Nobles of the Mystic Shrine v. Michaux, 279 U. S. 737, 73 L. ed. 931 3

Brader v. James, 246 U. S. 88, 62 L. ed. 591 12

Bunch v. Cole, 263 U. S. 250, 68 L. ed. 290 ..... 3, 4, 7, 12

Chupco v. Chapman, 76 Okl. 201, 170 Pac. 259, cert. den. 247 U. S. 506, 62 L. ed. 1240 15

Columbia Water-Power Co. v. Columbia Electric Street Railway L. & P. Co., 172 U. S. 475, 43 L. ed. 521, 19 Sup. Ct. 247 6

Commercial Bank of Cincinnati v. Buckingham's Ex'rs, 5 How. 317, 12 L. ed. 169 7

Conner v. Conner, 32 F. (2d) 581 12

Dierks, et al., v. Isaac, et al., 114 Okl. 158, 244 Pac. 750 15

Ferry v. King County, 141 U. S. 668, 35 L. ed. 895, 12 Sup. Ct. 128 6

Green v. United States, 19 F. (2d) 850 7

Harjo v. Empire Gas & Fuel Co., 28 F. (2d) 596 ..... 10, 13

Harris v. Bell, 254 U. S. 103, 65 L. ed. 159 10

Independent School District of Ackley v. Hall, 106 U. S. (16 Otto) 428, 27 L. ed. 237 7

In re T. E. Hill Co., 148 Fed. 832 7

Kiker v. United States, 63 F. (2d) 957 12

Lamb v. Cramer, 285 U. S. 217, 76 L. ed. 715 7

Lawrence v. State Tax Commission, 286 U. S. 276, 76 L. ed. 1102 ..... 3, 4

Longest v. Langford, 274 U. S. 499, 71 L. ed. 1170 7

Los Angeles Farming & Milling Co. v. City of Los Angeles, 217 U. S. 217, 54 L. ed. 736, 30 Sup. Ct. 432 6

Louisville-N. R. Co. v. City of Louisville, 166 U. S. 709, 41 L. ed. 1173, 17 Sup. Ct. 725 6

Lytle v. Fulotka, 106 Okl. 86, 233 Pac. 456 ..... 11, 15

Marchie Tiger v. Western Invest. Co., 221 U. S. 286, 55 L. ed. 738 12

Michigan Cent. R. Co. v. Michigan Southern R. Co., 19 How. 378, 15 L. ed. 689 6

Mullen v. Glass, et al., 43 Okl. 549, 143 Pac. 679 14

Murdock v. Memphis, 20 Wall. 590, 22 L. ed. 429 6

New Orleans Land Co. v. Brott, 263 U. S. 97, 68 L. ed. 187 7

New York, ex rel. Bryant, v. Zimmerman, 278 U. S. 63, 73 L. ed. 184 ..... 3, 7

North Shore Boom & Driving Co. v. Nicomen Boom Co., 212 U. S. 406, 53 L. ed. 574, 29 Sup. Ct. 355 6

Old Nick Williams Co. v. United States, 251 U. S. 541, 54 L. ed. 318 7

Parker v. Richard, 250 U. S. 235, 63 L. ed. 954 12

Snell v. Chicago, 152 U. S. 191, 38 L. ed. 408, 14 Sup. Ct. 489 6

Sperry Oil & Gas Co. v. Chisholm, 264 U. S. 488, 68 L. ed. 803 12

St. Louis, I. M. & S. R. Co. v. Starbird, 243 U. S. 592, 61 L. ed. 917 3

CASES—Continued.

PAGE

United States, ex rel. Champion Lumber Co., v. Fisher, 227 U. S. 455, 57 L. ed. 591, 33 Sup. Ct. 329 6

Ward v. Love County, 253 U. S. 17, 64 L. ed. 751 ..... 3, 4

World's Columbian Exposition Co. v. Republic of France, 91 Fed. 64 7

Talley v. Burgess, 246 U. S. 104, 62 L. ed. 600 12

STATUTES.

Act of April 28, 1904 (33 Stat. L. 573) 11

Act of May 27, 1908 (35 Stat. 312) 10, 11, 13, 15

Act of April 12, 1926 (44 Stat. 239) 2, 3, 5, 9, 10, 13, 14, 15

Judicial Code, section 237 (a) 1, 3, 4, 5, 7

Judicial Code, section 237 (b) 8

TEXT BOOKS.

Cyc of Fed. Proc., Vol. 5, Sec. 2649 5

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1934.

No. 142

NOAH STEWART, *Appellant,*

vs.

ROBERT KEYES, *ET AL., Appellees.*

ANSWER BRIEF IN SUPPORT OF MOTION TO DISMISS APPEAL.

This Brief is supplemental to appellees' statement in support of their motion to dismiss this appeal, and is filed principally for the purpose of answering certain misstatements contained in appellant's Brief opposing appellees' said motion to dismiss, and certain grounds presented for the first time in said Brief.

Appellant, in his statement in support of the jurisdiction of this Court, relies solely upon the first clause of Section 237(a) of the Judicial Code, providing the right of appeal from the final judgment or decree in any suit in the highest court of a state "where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity," and argues that in the final

judgment appealed from the validity of the Act of Congress of April 12, 1926 (44 Stat. 239), was drawn in question, and that the decision was against its validity. However, appellant, in his brief opposing appellees' motion to dismiss, presents for the first time two additional grounds of jurisdiction, to-wit: *(1)* Because the Oklahoma Supreme Court applied the Oklahoma statutes of limitation as against the contention of appellant in such way as to conflict with the Act of Congress of April 12, 1926 (44 Stat. 239); and, *(2)* because, if appellees' motion to dismiss this appeal should be sustained, a writ of *certiorari* should be granted.

I.

Appellees' statement in support of their motion to dismiss covers the single ground of appeal presented in appellant's statement as to the jurisdiction of this Court, and little more need be said with respect thereto.

While appellant in his Brief contends that the Supreme Court of Oklahoma denied the validity of the Act of Congress of April 12, 1926 (44 Stat. 239), "by express words," he further contends that "it is sufficient to confer jurisdiction to review that in substance and effect, or by necessary implication it denied the validity of the statute." Be that as it may, it is sufficient to say that in the final judgment appealed from there was not drawn in question the validity of the aforesaid act, and that the decision was not expressly or by implication against its validity. All that the Supreme Court of Oklahoma did was to consider and construe the aforesaid act to the extent only of holding that the same was not applicable to appellant's action. Instead of holding said act invalid, it was assumed that the same was valid. And

this being true, this Court, under its decisions cited in appellees' statement in support of their motion to dismiss, has no jurisdiction of this appeal.

Insofar as we are advised, the validity of the Act of April 12, 1926 (44 Stat. 239), has never been called in question. On the contrary, it is our understanding that the same has been universally conceded to be valid, as well as a very wholesome piece of legislation.

While the Supreme Court of Oklahoma did say that Congress would not have the power to revive a cause of action which had previously become fully barred by the statutes of limitation, it very clearly and positively held that the above act was not intended to revive any cause of action to which the statutes of limitation were theretofore applicable, and which had theretofore become completely barred thereby. To have held otherwise would most certainly have been contrary to the obvious purpose and intention of said act.

On page 11 of his Brief the appellant cites *New York, ex rel. Bryant*, v. *Zimmerman*, 278 U. S. 63, 73 L. ed. 184; *St. Louis, I. M. & S. R. Co.* v. *Starbird*, 243 U. S. 592, 61 L. ed. 917; *Lawrence* v. *State Tax Commission*, 286 U. S. 276, 76 L. ed. 1102; *Ward* v. *Love County*, 253 U. S. 17, 64 L. ed. 751; *Ancient Egyptian Arabic Order of Nobles of the Mystic Shrine* v. *Michaux*, 279 U. S. 737, 73 L. ed. 931; and *Bunch* v. *Cole*, 263 U. S. 250, 68 L. ed. 290, in support of his claim that this Court has jurisdiction of this appeal under the first clause of Section 237 (a) of the Judicial Code. However, none of said cases supports said contention. In the *Zimmerman* case the jurisdiction of this Court was sustained under the second clause of Section 237 (a) of the

Judicial Code. In said case the State court applied a State statute as against the specific claim that it was invalid under the Federal Constitution. The application of said statute necessarily amounted to a decision that the same was valid and constitutional. In the case at bar the Court refused to apply the Harreld-Hastings Act because it was inapplicable, and not because it was invalid. The *Starbird* case was decided in 1917, at which time this Court had jurisdiction to review by writ of error any decision of the highest court of a State which denied any title, right, privilege or immunity specially set up or claimed by either party under the laws of the United States. In said case the decision of the State court denied a claim asserted under said laws. In the *Lawrence* case the decision of the State court from which the appeal was taken held a State statute valid as against the claim that it violated the Federal Constitution. Jurisdiction on appeal was sustained under the second clause of Section 237(a) of the Judicial Code. The *Ward* case came to this Court on a writ of *certiorari*, and this Court took jurisdiction by reason of the fact that the State court denied a right claimed under a Federal statute on non-federal grounds which were plainly untenable. The *Michaux* case also came to this Court on a writ of *certiorari*, and jurisdiction was sustained on the ground that a right under an Act of Congress was specifically claimed and denied. The *Bunch* case was decided in 1923, at which time this Court had juisdiction to review by writ of error any decision of the highest Court of a State which denied any right, title, privilege or immunity claimed under the laws of the United States. In said case the State court applied a State statute to defeat and deny a specific claim made un-

der an Act of Congress that a lease covering Indian lands was void.

II.

Appellant in his Brief takes the position for the first time that this Court has jurisdiction of this appeal on the ground that the Oklahoma Supreme Court applied the Oklahoma statutes of limitation in such a way as to be repugnant to and in conflict with the Act of April 12, 1926 (44 Stat. 239). Obviously this is an effort to invoke the second clause of Section 237 (a) of the Judicial Code, providing the right of appeal from the final judgment or decree in any suit in the highest court of a state "where is drawn in question the validity of the statute of any State, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

There are two reasons why the above claimed jurisdiction ground of appeal is untenable: *(1)* Said ground was not invoked in any of the proceedings herein, being suggested for the first time in appellant's Brief; and, *(2)* in the final judgment appealed from it was not held, either expressly or by necessary inference, that there was any repugnancy between the statutes of limitation of the State of Oklahoma and the Act of April 12, 1926 (44 Stat. 239), and neither the validity nor the invalidity of said Act of Congress or of the statutes of limitation of the State of Oklahoma was raised or decided.

In Cyc. of Fed. Proc., Vol. 5, Sec. 2649, it is said:

"* * * The validity of a federal statute or treaty is not necessarily drawn in question merely because a

claim is asserted thereunder, *nor is the invalidity of a state law drawn in question by the mere assertion of some supposed federal right or claim contrary thereto or inconsistent therewith.* The validity of a federal statute, *or the invalidity of a state statute on federal grounds, is not drawn in question in a decision which involves only the construction or interpretation of the statute.* • • •"

In support of the italicized portions of the above quotation the following cases are cited:

United States, ex rel. Champion Lumber Co., v. *Fisher*, 227 U. S. 455, 57 L. ed. 591, 33 Sup. Ct. 329;

Los Angeles Farming & Milling Co. v. *City of Los Angeles*, 217 U. S. 217, 54 L. ed. 736, 30 Sup. Ct. 432;

North Shore Boom & Driving Co. v. *Nicomen Boom Co.*, 212 U. S. 406, 53 L. ed. 574, 29 Sup. Ct. 355;

Columbia Water-Power Co. v. *Columbia Electric Street Railway L. & P. Co.*, 172 U. S. 475, 43 L. ed. 521, 19 Sup. Ct. 247;

Murdock v. *Memphis*, 20 Wall. 590, 22 L. ed. 429;

Michigan Cent. R. Co. v. *Michigan Southern R. Co.*, 19 How. 378, 15 L. ed. 689;

Los Angeles Farming & Milling Co. v. *City of Los Angeles*, 217 U. S. 217, 54 L. ed. 736, 30 Sup. Ct. 432;

Louisville - N. R. Co. v. *City of Louisville*, 166 U. S. 709, 41 L. ed. 1173, 17 Sup. Ct. 725;

Snell v. *Chicago*, 152 U. S. 191, 38 L. ed. 408, 14 Sup. Ct. 489;

Ferry v. *King County*, 141 U. S. 668, 35 L. ed. 895, 12 Sup. Ct. 128;

Commercial Bank of Cincinnati v. *Buckingham's Ex'rs*, 5 How. 317, 12 L. ed. 169.

See to the same effect:

Longest v. *Langford*, 274 U. S. 499, 71 L. ed. 1170;
New Orleans Land Co. v. *Brott*, 263 U. S. 97, 68 L. ed. 187.

On page 15 of his Brief appellant cites *Bunch* v. *Cole*, 263 U. S. 250, 68 L. ed. 290; *New York, ex rel. Bryant*, v. *Zimmerman*, 278 U. S. 63, 73 L. ed. 184; *Independent School District of Ackley* v. *Hall*, 106 U. S. (16 Otto) 428, 27 L. ed. 237; *Old Nick Williams Co.* v. *United States*, 251 U. S. 541, 54 L. ed. 318; *Lamb* v. *Cramer*, 285 U. S. 217, 76 L. ed. 715; *World's Columbian Exposition Co.* v. *Republic of France*, 91 Fed. 64; *Green* v. *United States*, 19 F. (2d) 850, and *In re T. E. Hill Co.*, 148 Fed. 832, in support of his claim that this Court has jurisdiction of this appeal under the second clause of Section 237(a) of the Judicial Code. However, only two of said cases, to-wit, the *Zimmerman* and *Bunch* cases, involved the jurisdiction of this Court on appeal. The remainder of said cases involved the necessity for assignment of errors on appeal. In the *Zimmerman* case the State court applied a State statute against a specific claim that it was invalid under the Federal Constitution. The *Bunch* case was decided in 1923, at which time this Court had jurisdiction to review by writ of error any decision of the highest court of a State which denied any right, title, privilege or immunity claimed under the laws of the United States. In said case the State court applied a State statute to defeat and deny a specific claim made under an Act of Congress that a lease covering Indian lands was void. It

was not held in said case that the application of the State statute gave this Court jurisdiction to review by writ of error, but the holding was that the denial of the specific claim made under the Act of Congress was sufficient, under the law as it then existed, to confer jurisdiction upon this Court.

III.

Appellant in his Brief suggests for the first time that if appellees' motion to dismiss should be sustained he should be granted a writ of *certiorari*. We insist, however, that there exists no reason for granting a writ of *certiorari* in this case. An examination of Section 237(b) of the Judicial Code, and of Rule 38 of this Court, pertaining to writs of *certiorari*, discloses nothing to justify the granting of such writ.

Appellant suggests that the Supreme Court of Oklahoma in this case has decided a federal question not in accord with the applicable decisions of this Court, and contrary to the right of Congress to legislate concerning the inherited lands of full-blood Indians. However, there is no basis for these claims. Appellant cites no decision of this Court with which the decision of the Supreme Court of Oklahoma conflicts. On the contrary, the decision of the Supreme Court of Oklahoma and the authorities cited therein are in harmony with the decisions of this Court, and with the right of Congress to legislate concerning inherited lands of full-blood Indians. In fact, some of the authorities relied on by the Supreme Court of Oklahoma, if not most of them, are based upon decisions of this Court.

Appellant further suggests that there are many cases which will be affected by the decision from which he has appealed. This, however, is very improbable. The Act of April 12, 1926 (44 Stat. 239), became effective on April 12, 1926, and the restricted Indians referred to therein were given until at least April 12, 1928, to sue. Now, more than six years have transpired since the latter date, and in all probability all cases involving the identical question decided by the Supreme Court of Oklahoma herein have been finally disposed of. In appellees' statement in support of their motion to dismiss this appeal they cite three cases in which the Supreme Court decided prior to this case the identical question decided herein. Moreover, it is highly probable that if this Court were to take jurisdiction of this case and decide the same contrary to the Supreme Court of Oklahoma, the effect thereof would be to open the floodgates to litigation, which the Act of April 12, 1926 (44 Stat. 239), was designed to close.

Appellant in his Brief undertakes to create the impression that this case involves an alienation of Indian lands contrary to the Acts of Congress. This is sought in this way: It is argued that under the decisions of the Supreme Court of Oklahoma the statutes of limitations of that state operate to transfer title to land, and that when applied to Indian lands the result is to sustain an alienation contrary to the Acts of Congress. But, whatever may be the effect of the Oklahoma statutes of limitations in this respect, it will be borne in mind that the title of the appellees is predicated upon a guardian's deed which was duly and regularly ap-

proved by the proper probate court, in accord with Sections 1, 2, 6 and 9 of the Act of May 27, 1908 (35 Stat. 312). See, also, *Harris* v. *Bell*, 254 U. S. 103, 65 L. ed. 159.

The attack made by the appellant upon appellees' title was not that his interest in the lands involved was not alienable, in the very manner in which it was alienated, but that the appointment of his guardian was invalid. Therefore, the following language by the Eighth Circuit Court of Appeals in the case of *Harjo* v. *Empire Gas & Fuel Co.*, 28 F. (2d) 596, is particularly applicable:

> "The deed being approved, as provided by law, the Indians as to the question of setting the same aside on the ground of fraud were in no different position than a white person would be, and *the right to attack the deed for fraud could be lost by laches or the statute of limitations. Schrimpscher* v. *Stockton*, 183 U. S. 290, 22 S. Ct. 107, 46 L. ed. 203; *Felix* v. *Patrick*, 145 U. S. 317, 12 S. Ct. 862, 36 L. ed. 719. *This is not a situation where a transfer of Indian lands is void because of violation of government restrictions.* Hence it does not present an attempt to circumvent the federal statutes by divesting title by a stipulation in court. We see no reason why the claim of the Indians in the District Court of Seminole County that the deed had been secured by fraud could not be settled and waived by the attorneys for the government authoritatively representing said Indians in the litigation."

Appellant contends that he is a "restricted Indian" and that the lands involved were "restricted lands" within the meaning of the Act of April 12, 1926 (44 Stat. 239), but that such is not the case is borne out by the authorities set out in appellees' statement in support of their motion to dismiss this appeal.

Section 9 of the Act of May 27, 1908 (35 Stat. 312), in part, reads as follows:

> "That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land."

By virtue of the foregoing, the lands involved, appellant's interest therein, and appellant became unrestricted, and appellant being an incompetent person, his said interest in said lands was subject to sale by his guardian through the County Court of Hughes County, Oklahoma. See Section 2 of the Act of April 28, 1904 (33 Stat. 573); Sections 1, 2, and 6 of the Act of May 27, 1908 (35 Stat. 312); and *Harris* v. *Bell*, 254 U. S. 103, 65 L. ed. 159.

In the case of *Lytle* v. *Fulotka*, 106 Okl. 86, 233 Pac. 456, the Court said:

> "The probate courts of the State of Oklahoma have jurisdiction to sell the inherited lands of incompetent adult full-blood Indians of the Five Civilized Tribes. It is contended that section 6 of the Act of May 27, 1908 (35 Stat. 315), grants jurisdiction to probate courts of the State of Oklahoma only in the case of minor allottees. Said section is limited by its terms to minors and minor allottees, but the probate courts of this state and former Indian Territory have habitually exercised probate jurisdiction, not only over the estates of minor allottees, but of minor heirs as well. *Yarhola* v. *Strough*, 64 Okl. 195, 166 P. 729. Section 6 of such act is not the source of jurisdiction of the probate courts of the State of Oklahoma over the estates of Indian minors. It is merely declaratory of the law as it had existed since the passage of the Act of April 28, 1904 (chapter 1824, 33 Stat. 573), if not before. By that act it was provided:
>
> 'And full and complete jurisdiction is hereby

> conferred upon the District Courts in said territory in the settlements of all estates of decedents, the guardianships of minors and incompetents, whether Indian, freedmen or otherwise.'

"Thus, full probate jurisdiction was granted to the District Courts of Indian Territory over the estates of decedents, minors, and incompetents, 'whether Indian, freedmen or otherwise.' *Morrison* v. *Burnette*, 154 F. 617, 83 C. C. A. 391; *Jennings* v. *Wood*, 192 F. 507, 112 C. C. A. 657; *Robinson* v. *Long Gas Co.*, 221 F. 398, 136 C. C. A. 642; *Cowles* v. *Lee*, 35 Okl. 159, 128 P. 688; *Wellsville Oil Co.* v. *Miller*, 44 Okl. 493, 145 P. 344.

"Upon the admission of the state into the Union, this jurisdiction was, by virtue of the constitution and enabling act, conferred upon the probate courts of the state. Congress recognized the jurisdiction of the probate courts over the estates of incompetents by section 2 of the Act of May 27, 1908, when, in providing for the leasing of restricted lands for oil and gas, it added this proviso:

> 'And provided further that the jurisdiction of the probate courts of the State of Oklahoma, over lands of minors and incompetents shall be subject to the foregoing provisions'."

On pages 23 and 24 of his Brief, appellant cites *Sperry Oil & Gas Co.* v. *Chisholm*, 264 U. S. 488, 68 L. ed. 803; *Marchie Tiger* v. *Western Invest. Co.*, 221 U. S. 286, 55 L. ed. 738; *Parker* v. *Richard*, 250 U. S. 235, 63 L. ed. 954; *Brader* v. *James*, 246 U. S. 88, 62 L. ed. 591; *Talley* v. *Burgess*, 246 U. S. 104, 62 L. ed. 600; *Kiker* v. *United States*, 63 F. (2d) 957; *Conner* v. *Cornell*, 32 F. (2d) 581; and *Bunch* v. *Cole*, 263 U. S. 250, 68 L. ed. 290, in support of his contention that his inherited interest in lands involved herein were "restricted," and that he is, with respect to his said

interest in said lands, a "restricted" Indian, within the meaning of the Act of April 12, 1926 (44 Stat. 239). However, in none of said cited cases, except the *Kiker* and *Conner* cases, was there involved any conveyance which was made by a full-blood Indian, or his guardian, and approved by any probate court, or the judge thereof, subsequent to the Act of May 27, 1908 (35 Stat. 312), of his inherited interest in the allotment of a deceased Indian. Just why the *Kiker* case is cited we are at a loss to understand. True, that case involved an approved conveyance of a full-blood Indian of his inherited interest in the allotment of a deceased Indian, but there is nothing said or decided therein which throws any light at all upon the instant contention. And the *Conner* case, decided April 19, 1929 *(certiorari* denied, 280 U. S. 583), is a positive authority against appellant's contention. In that case the Eighth Circuit Court of Appeals applied the law of estoppel by a judgment of dismissal to an attempted attack upon an approved conveyance made by certain full-blood Indians after the Act of May 27, 1908 (35 Stat. 312), of their inherited interests in the allotment of a deceased Indian. Furthermore, it is noteworthy that in *Harjo* v. *Empire Gas & Fuel Co.*, 28 F. (2d) 596, decided September 21, 1928, the same Court specifically held that the statutes of limitation were applicable to such a conveyance as is involved herein. In none of the cases cited on pages 23 and 24 of appellant's Brief was any question with respect to the statutes of limitation involved.

Since the Act of May 27, 1908 (35 Stat. 312), the status of allotments of living Indian minors of less than one-half blood, to say nothing of numerous other allotments, or parts of allotments, and the status of allotments of deceased In-

dians, in the hands of full-blood Indian heirs, who happened to be mentally incompetent, have been practically identical, and no one would contend for a minute that since said Act the Indians in the class first referred to, or their allotments, were "restricted." Since said Act, by virtue of the provisions thereof, thousands upon thousands of the allotments of minors of less than one-half blood have been sold through the probate courts of Oklahoma, and the Supreme Court of Oklahoma in hundreds of cases has consistently applied the statutes of limitation to such sales. But if the contention of the appellant were sustained, the inevitable result would be that prior to the Act of April 12, 1926 (44 Stat. 239), the statutes of limitation of the State of Oklahoma were never applicable to probate sales of allotments of minor Indians of less than one-half blood, and that by virtue of said Act such allottees were given until at least April 12, 1928, to attack such probate sales, although thousands of them were made shortly after July 27, 1908. Thus the Act of April 12, 1926 (44 Stat. 239), would operate to open wide, instead of close, the flood-gates of litigation—certainly a most incongruous result.

The sole ground upon which appellant attacked the guardian's sale herein was that the appointment of his guardian was void under the Oklahoma law. However, in the case of *Mullen* v. *Glass, et al.*, 43 Okl. 549, 143 Pac. 679, decided October 13, 1914, prior to the appointment of John A. Jacobs as guardian of appellant, the Supreme Court of Oklahoma held that such an appointment was good and valid.

Appellant argues that there is a conflict in the Oklahoma Supreme Court decisions with respect to the application of the Oklahoma statutes of limitation to a case like the one at bar, and that prior to the enactment of the Act of April 12, 1926 (44 Stat. 239), said Court uniformly held that said statutes were not applicable, but that since the enactment of said Act it has held otherwise, citing on pages 25 and 26 of his Brief numerous cases in support of the contention. However, except as to the case of *Lytle* v. *Fulotka*, 102 Okl. 86, 233 Pac. 456, in which the opinion was written by a Supreme Court Commissioner, none of the cases cited holds that the statutes of limitation were not applicable to a case like the one at bar. These cases either involved transactions prior to the effective date of the Act of May 27, 1908 (35 Stat. 312), or conveyances in contravention of Acts of Congress, or where no conveyance at all was involved and it was claimed that adverse possession alone precluded the Indian from suing. We, therefore, assert that there is not, and never has been, any conflict in the decisions of the Supreme Court of Oklahoma upon any question involved herein.

In the case of *Dierks, et al.*, v. *Isaac, et al.*, 114 Okl. 158, 244 Pac. 750, the Supreme Court of Oklahoma, in an opinion by Mr. Justice PHELPS, distinguished, if it did not overrule, *Lytle* v. *Fulotka, supra.* In any event, the subsequent Oklahoma decisions cited in appellees' statement in support of their motion to dismiss this appeal are contrary to *Lytle* v. *Fulotka, supra,* and in at least one of said cases, *Chupco* v. *Chapman*, 76 Okl. 201, 170 Pac. 259, this Court, in 247 U. S. 506, 62 L. ed. 1240, denied a petition for *certiorari.*

In view of the foregoing, and what is contained in our motion to dismiss and the statement in support thereof, this appeal, we think, should be dismissed and *certiorari* denied.

Respectfully submitted,

T. H. WREN,
Attorney for Appellee, Robert Keyes.

W. W. STOKES,
Attorney for Appellee, T. B. Slick.

A. M. BEETS,
Attorney for Appellees, D. Replogle, William G. Johnston and Echolustee Oil Corporation.

JOHN ROGERS,
Attorney for Appellee, Leslie Rogers.

JAMES C. DENTON,
RICHARD H. WILLS,
JOHN H. CROCKER,
IKE L. LOCKEWITZ,
JOHN P. GREVE,
Attorneys for Appellees, Mid-Continent Petroleum Corporation, Cosden Oil & Gas Company, Cosden & Company, National Bank of Commerce of New York City, and Phillips Petroleum Company.